



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OC 18 2002

The Honorable Charles E. Grassley
Ranking Minority Member
Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Grassley

In response to your letter of September 18, 2002, we have asked the Office of Justice Programs to prepare answers to your first set of questions, and the Federal Bureau of Investigation to prepare answers to the second set. I understand that your staff and mine have agreed to send individual letters on each set of questions so that you receive responses as quickly as possible, and a response to the second set of questions will be forthcoming.

First Set of Questions: REMOVAL FROM GOVERNMENT CONTRACT/GRANT

1. Does the federal government or DOJ, and specifically the ODP, have laws, rules, policies or standards or guidelines that pertain to the ability or discretion to order a grant recipient to not allow a person to continue working on a program funded by DOJ? If so, please provide them in your response. I would ask that you also provide the names and titles of all decision makers in this process at ODP and DOJ. In addition, please detail what actions taken by an individual would rise to the level to justify removal from a DOJ contract/grant.

The Office of Justice Programs ("OJP"), the parent organization for the Office of Domestic Preparedness ("ODP"), does not have any laws, rules, policies, standards, or guidelines that focus specifically on the ability of OJP to determine who should or should not work on an OJP-funded grant or cooperative agreement, apart from certain financial and ethical restrictions (*i.e.*, the Hatch Act, certain prohibitions on funding to organizations or individuals debarred from Federal assistance programs, and ethical restrictions relating to conflicts of interest in hiring and contracting). OJP is unaware of any such laws, rules, policies, standards, or guidelines that may govern other Federal grant programs.

However, all cooperative agreements funded by OJP contain a "Statement of Federal Involvement" that describes the nature of OJP's control over the cooperative agreement. For

example, the cooperative agreement with Louisiana State University (“LSU”) (2002-VO564-LA-GT) contained the following Statement of Federal Involvement:

OJP/ODP Involvement: OJP/ODP will maintain managerial oversight and control of the NDPC's [National Domestic Preparedness Consortium, of which LSU is a member] activities, including redirection of the activities to be performed under the various cooperative agreements, to ensure that the activities support the mission and goals of OJP/ODP in an efficient and cost effective manner, as well as conform to the priorities established by OJP/ODP for development and delivery of first responder training.

This provision indicates that OJP will exercise “managerial oversight and control” of a grant recipient’s activities. Examples of the oversight and control that is exercised are set forth in OJP’s Grant Management Policies and Procedures Manual, which is incorporated by reference into all OJP awards:

Cooperative agreements are awarded to eligible recipients at the discretion of the awarding agency. OJP uses cooperative agreements to reflect the relationship between OJP and an eligible recipient when . . . substantial involvement is anticipated between OJP and the recipient during performance of the contemplated activity. Cooperative agreements can be used for discretionary funding.

* * *

What is “substantial federal involvement”?

The following examples are meant to illustrate the general types of activity that would be considered substantial Federal involvement:

OJP authority to immediately halt an activity if performance specifications are not met;

OJP review and approval of one stage before work can begin on a subsequent stage;

OJP review and approval of substantive provisions of proposed subaward; provisions that go beyond existing policies on Federal review of grantee procurement standards and sole source procurement;

OJP involvement in the selection of key personnel of the award recipient (not including provisions for the participation of a named principal investigator for research projects);

OJP and award recipient collaboration or joint participation;

OJP monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;

Substantial, direct OJP operational involvement or participation during the activity to ensure compliance with such statutory requirements as civil rights, environmental protection, human subjects protection, and provision for the handicapped; participation that exceeds normal statutory compliance with these requirements and involves active participation by OJP; and

Other OJP requirements limiting award recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements. to determine which persons will be permitted to work on the NDPC programs.

OJP M 4500.2D, § 3.2 (Aug. 13, 2001) (emphasis added). As the highlighted example (“OJP involvement in the selection of key personnel of the award recipient”) indicates, it is specifically contemplated under OJP’s grants management policies that OJP may on occasion need to make a decision concerning which personnel of the award recipient should work on an OJP-funded grant or cooperative agreement.

As the foregoing provisions (and others like it) suggest, the determination of who may or may not perform one or another function on sensitive Department projects is inherently discretionary and extremely case-specific, with the particular facts and context of each situation weighing heavily in each such determination. Therefore, no procedures have been specifically established for these infrequent determinations and no Department officials have been designated specifically to make the determinations. For the same reasons, no standards have been established detailing what actions by an individual would result in a request by the Justice Department that an individual not work on an OJP-funded program.

2. Does this policy provide for an appeals process? If so, please describe it.

As stated above, the Justice Department has not established any policy pertaining to the ability or discretion to order a grant recipient to not allow a person to continue working on a program funded by the Department. Such determinations are infrequent and case-specific, with the particular facts and context of each situation influencing each determination. As there is no established policy pertaining to this matter, the Department has not established an appeals

process for the infrequent situation in which it does not want a certain individual to work on a program it funds.

3. Please describe both the type of evidence as well as the evidentiary standard that is relied upon for decisions to order a grant recipient not to use a person's services in a program that receives DOJ funds.

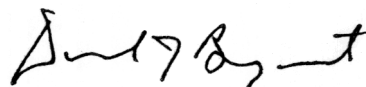
As noted above, determinations on the suitability of an individual to work on an OJP-funded program are inherently discretionary and extremely case-specific, with the particular facts and context of each situation weighing heavily in each such determination. No evidentiary standards have been established for the infrequent and case-specific circumstances where a suitability determination is required.

4. Please provide a detailed description of other instances in which a Justice Department official in the last three years has ordered a grant recipient not to employ a person in a program funded by a DOJ grant. This description should include the name of the DOJ official who made the decision, the recipient of grant, the title of the program using the grant and the reason for the decision.

It must be clarified that, in the case of Mr. Hatfill, the Justice Department only ordered LSU not to permit him to work as a subject matter expert or a course instructor on any Justice Department-funded program. The Department did not order LSU to not employ or terminate the employment of Mr. Hatfill. LSU was free to continue to employ his professional services on any Justice Department-funded program, so long as he was not employed as a subject-matter expert or course instructor in such program. The Justice Department is unaware of any circumstance in the last three years in which a cooperative agreement recipient has been ordered to not permit an individual to work on a Federally-funded program.

We hope this information is helpful to you. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

cc: / The Honorable Joseph R. Biden, Jr., Chairman
Subcommittee on Crime and Drugs
Committee on the Judiciary



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NOV 4 2002

The Honorable Charles Grassley
Ranking Minority Member
Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This supplements our prior response to your letter, dated September 18, 2002, regarding the Department's use of the term "person of interest." Before responding to the numbered questions in your letter, we would like to address your particular concerns about the Attorney General's use of the term "person of interest" in connection with the Anthrax investigation.

The Department acknowledged its investigation of the Anthrax mailings in accordance with its established policies regarding matters that have received substantial publicity and about which the public needs reassurance that law enforcement is conducting an investigation. The Anthrax investigation has been the subject of intense media interest along with rumors circulated on web pages and in academic circles about who might be responsible. A *New York Times* columnist, Nicholas Kristoff, publicly alleged that "Mr. Z" (whom he later identified as Steven Hatfill) was responsible for the anthrax attacks.

When the FBI conducted a consensual search of Dr. Hatfill's apartment on June 25, 2002, in Frederick, Maryland, the mainstream media immediately interpreted this search as confirmation of all the speculation that had previously been circulating about Dr. Hatfill. The FBI was asked whether Dr. Hatfill was a suspect in the case and when an arrest was anticipated. It was under these circumstances that unnamed sources at the FBI first described Steven Hatfill as one of many "persons of interest" (See published newspaper and broadcast transcripts affixed hereto). The phrase was never used by the FBI or the Department of Justice to draw media attention to Dr. Hatfill. On the contrary, the phrase was used to deflect media scrutiny from Dr. Hatfill and to explain that he was just one of many scientists who had been interviewed by the FBI and who were cooperating with the anthrax investigation. The Attorney General's statement regarding Dr. Hatfill was made in this same context and was consistent with publicly-available information regarding the matter. Moreover, we understand that, in a nationally televised press

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conference on August 11, 2002, Dr. Hatfill told the press: *"I do not object to being considered a subject of interest by the authorities because of my knowledge and background in the field of biological warfare defense."*

Turning now to the numbered questions in your letter, our responses are set forth below.

Please define what is meant as "a person of interest" and how that is different from a "suspect." Does the DOJ/FBI have a definition for the phrase "a person of interest?"

There is no formal definition for the term "person of interest" to our knowledge, although we think that it is commonly understood to refer to an individual whom law enforcement officials seek to question in connection with a particular matter. This means simply that the individual is believed to have information that may be relevant to an investigation and does not suggest that the individual is a suspect. Similarly, there is no formal definition for the term "suspect" although it is commonly understood to refer to an individual who is a "subject" or "target," which are terms defined in the United States Attorney's Manual. See USAM 9-11.151.

2. What are the DOJ/FBI policies and procedures for deciding that someone should be publicly named as "a person of interest?" Please provide copies of any policy, procedures or other DOJ/FBI guidance in this manner. Specifically, who are the decision makers in this process? Please provide their names and titles.

There is no formal or written federal policy governing the use of this term.

3. Please describe both the type of evidence as well as the evidentiary standard that is relied upon for deciding to name someone publicly as "a person of interest."

Please see our responses to questions 1 and 2 above.

4. Please provide examples of any other individual that was named publicly as "a person of interest" by DOJ/FBI in the last three years.

Neither the Department nor the FBI maintain records that would yield information responsive to this request, although we believe that the term has been used from time to time in providing information about investigations of particular interest to the public. The FBI reports that the phrase or similar language may have been used in referring to one or more persons whom the Bureau sought to question after the September 11, 2001, attacks.

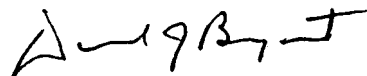
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5. Does the DOJ/FBI intend to continue to publicly name individuals "persons of interest?"

The Department, including the FBI, will continue to provide information in matters of significant public interest. Our efforts in this regard are informed by concern for the confidentiality of our investigations, the privacy interests of the individuals who may be involved, and the public's understandable need for reassurance that law enforcement is taking all appropriate steps to investigate criminal misconduct.

We hope that this information is helpful. If the Department can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Bryant".

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc The Honorable Joseph R. Biden, Jr.
Chairman

**FBI's public references to Steven Hatfill
as a "Person of Interest"**

ABC News: Good Morning America
Wednesday, June 26, 2002

BRIAN ROSS reporting:

Well, good morning, Claire.

His name is Dr. Steven Hatfill, and **the FBI says** he is not considered a suspect, but **what they call a person of interest**. Agents searched Hatfill's apartment until late last night looking for leads after

Hatfill apparently consented to the search. Agents say they found nothing immediately incriminating, but that further lab tests will be run on material removed from Hatfill's apartment.

The Washington Post
Friday, June 28, 2002

Biological Warfare Experts Questioned in Anthrax Probe; More Than Two Dozen
Homes Searched by FBI
by Guy Gugliotta and Dan Eggen

The FBI said yesterday it is focusing on about 30 U.S.-based biological warfare experts in its investigation of last year's anthrax attacks, and has searched the homes of more than two dozen in recent months -- always with the owner's consent.

The FBI said that former Army researcher Steven J. Hatfill, whose Frederick apartment was searched Tuesday, was on the floating short list of **"persons of interest,"** but noted both publicly and in private meetings last week that Hatfill is not a suspect in the case.

Times Union Albany, NY
Friday, August 2, 2002

Apartment a focus in anthrax inquiry
ERIC ROSENBERG

WASHINGTON -- **FBI agents** on Thursday searched the apartment of a biological warfare scientist for a second time in five weeks, **declaring him a "person of interest"** in the government's 10-month-long investigation into the deadly anthrax attacks.

Agents wearing protective gloves returned to the Frederick, Md., apartment of Steven J. Hatfill, and searched it for clues that might link him to the anthrax killings

The Star-Ledger Newark, NJ

Sunday, August 4, 2002

Anthrax case entangles U.S. expert - FBI scrutinizing scientist who taught biodefense to agents

KEVIN COUGHLIN

. . . Only days before the FBI re-searched the scientist's Maryland apartment and his Florida storage facility last week, federal agents were taking Hatfill's government-funded biodefense course at Louisiana State University.

"The FBI was bragging how good he was," said Stephen Guillot Jr., director of LSU's National Center for Biomedical Research and Training. "That's what's crazy about this thing."

Citing the anthrax investigation, the school placed Hatfill on a paid month's leave Friday - even though **the FBI has characterized him** only as a "**person of interest**," not a suspect, in the case.

ABC News: World News Tonight

Thursday, August 1, 2002

BARRY SERAFIN reporting

. . . The FBI has been investigating Hatfill because he had access to anthrax in his job as a government researcher and then later, in 1999, commissioned a study detailing how a hypothetical anthrax attack could be carried out by mail . . .

Despite today's repeat search, Hatfill has not been charged, not even labeled as a suspect

(VO) But as one of those who had access to anthrax and the expertise to carry out the attacks, he remains very much what **the FBI has called a person of interest**. Barry Serafin, ABC News, Washington.

NBC News: Today

Friday, August 2, 2002

ANN CURRY, anchor: **The FBI says** it is making progress in the investigation into last year's anthrax attacks. They have searched the home of a former government researcher, saying he is not a suspect but is, **quote, "a person of interest."** The former researcher, Steven Hatfill, is--has denied any involvement with the anthrax mailings.

USA Today

Thursday, August 8, 2002

Anthrax probe seems to intensify ; Progress may not mean much yet, Ashcroft says
by Kevin Johnson and Toni Locy

WASHINGTON -- A week after FBI agents investigating the anthrax attacks searched the apartment of a former government scientist for the second time, U.S. authorities are not close to making an arrest, Attorney General John Ashcroft said in an interview with USA TODAY.

Ashcroft, in his broadest public comments on what has been a frustrating investigation into last fall's anthrax attacks, said the probe was proceeding with perhaps more intensity than ever. But he said that a "conclusion" is not imminent.

"Progress is being made," Ashcroft said in his fifth-floor suite at the Justice Department. "But until you cross the thresholds of information that will provide the basis for action, it may be that the progress doesn't mean a lot."

Since anthrax-laden letters that were mailed to government and media offices led to the deaths of five people, infected 22 others and contaminated several government buildings, FBI agents have pursued thousands of leads. They have been particularly interested in 30 to 40 U.S.-based scientists who have had access to labs where anthrax is kept and who have expertise in handling the deadly bacteria.

Last week, the FBI returned to the Maryland apartment of Steven Hatfill, 48, a former Army scientist at Fort Detrick, Md. Hatfill, who has a doctorate in molecular biology, was **described by the FBI only as "a person of interest"** in the probe . . .

NPR: Weekend All Things Considered

Sunday, August 11, 2002

MADELEINE BRAND, host: David, why has Steven Hatfill been the focus of so much attention?

DAVID KESTENBAUM reporting

The FBI has told me he's one of 20 or 30 persons of interest. That's not a legal term. That just means he's someone with relevant knowledge and expertise in biological weapons. And he does have knowledge and expertise. Steven Hatfill worked at USAMRIID, the Army's biodefense lab in Maryland. .

In his press conference on August 11, 2002 in Alexandria, VA, Steven Hatfill read the following statement:

"I do not object to being considered a subject of interest by the authorities because of my knowledge and background in the field of biological warfare defense."